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December 16, 2021

*VIA ECF*

Hon. Vernon S. Broderick  
United States District Court  
Southern District of New York  
Thurgood Marshall United States Courthouse  
40 Foley Square, Room 415  
New York, New York 10007

**APPLICATION GRANTED**

**SO ORDERED** *Vernon S. Broderick*  
**VERNON S. BRODERICK**  
**U.S.D.J.** 12/17/2021

Defendants are directed to Rule 5.B. of my Individual Rules & Practices in Civil Cases and to meet and confer with Plaintiff as necessary to determine if the Letter Motion for Leave to File Sur-reply can be filed in redacted form on ECF. So ordered.

Re: *Spectrum Dynamics Medical Limited v. General Electric Company, et al.*,  
Case No.: 18-cv-11386 (VSB)

Dear Judge Broderick:

We represent Defendants in the above-referenced action. We write pursuant to Rule 5.B of Your Honor's Individual Practices in Civil Cases to respectfully request permission to file under seal Defendants' Letter Motion for Leave to File Sur-reply which is being filed today, December 16, 2021, and contains information the parties have designated Highly Confidential or Confidential under the parties' Stipulated Confidentiality and Protective Order (the "Protective Order") (Dkt. 156).

The presumption of public access to judicial documents can be overcome if countervailing factors warrant confidentiality. *See Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110, 120 (2d Cir. 2006); *see also Nixon v. Warner Commc'n Inc.*, 435 U.S. 589, 598 (1978). Sealing of records may be justified to preserve "higher values," including the need to protect an entity from competitive injury. *Lugosch*, 435 F.3d at 124; *see also Tropical Sails Corp. v. Yext, Inc.*, No. 14-cv-7582, 2016 U.S. Dist. LEXIS 49029, at \*10-11 (S.D.N.Y. Apr. 12) (risk of "competitive injury is sufficiently serious to warrant protection" of proprietary business information). Consistent with this, courts routinely permit sealing and redaction of competitively sensitive proprietary business information or information subject to a claim of privilege. *See, e.g., Louis Vuitton Malletier S.A. v. Sunny Merch. Corp.*, 97 F. Supp. 3d 485, 511 (S.D.N.Y. 2015); *Encyclopedia Brown Prods., Ltd. v. Home Box Office, Inc.*, 26 F. Supp. 2d 606, 614 (S.D.N.Y. 1998); *see also Nixon*, 435 U.S. at 598 (recognizing need to seal information that might "harm a litigant's competitive standing").

Here, Defendants' Letter Motion contains references to information that is assertedly competitively sensitive and proprietary information of one or both parties and, if disclosed, could pose a substantial risk of harm. This is the sort of sensitive information that courts consistently protect from disclosure. *See, e.g., Ferring B.V. v. Allergan, Inc.*, No. 12-cv-2650, 2017 U.S. Dist. LEXIS 150239, at \*16 (S.D.N.Y. Sep. 7) (sealing documents containing proprietary information); *Encyclopedia Brown*, 26 F. Supp. 2d at 612 (sealing documents reflecting sensitive trade secret information).

For these reasons, Defendants respectfully request permission to file under seal Defendants' Letter Motion for Leave to File Sur-reply.

Marla.Butler@ThompsonHine.com Fax: 404.541.2905 Phone: 404.407.3680



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Very truly yours,

/s/ Marla R. Butler

THOMPSON HINE LLP

Marla R. Butler

Carl Wesolowski (*pro hac vice*)

Two Alliance Center

3560 Lenox Road NE, Suite 1600

Atlanta, Georgia 30326

Tel.: (404) 541-2900

Fax: (404) 541-2905

Marla.Butler@ThompsonHine.com

Carl.Wesolowski@ThompsonHine.com

Jesse Jenike-Godshalk (*pro hac vice*)

312 Walnut Street, Suite 2000

Cincinnati, Ohio 45202

Tel.: (513) 352-6700

Fax: (513) 241-4771

Jesse.Godshalk@ThompsonHine.com

Brian Lanciault

335 Madison Avenue, 12th Floor

New York, New York 10017

Tel.: (212) 344-5680

Fax: (212) 344-6101

Brian.Lanciault@ThompsonHine.com

Jeffrey Metzcar

Discovery Place

10050 Innovation Drive

Miamisburg, Ohio 45342

Tel. (937) 443-6841

Fax (937) 430-3781

Jeff.Metzcar@thompsonhine.com

*Attorneys for Defendants*

*General Electric Company, GE Healthcare,*

*Inc., GE Medical Systems Israel Ltd., Jean-*

*Paul Bouhnik, Sergio Steinfeld,*

*Arie Escho, and Nathan Hermony and for Non-*

*Party Yaron Hefetz*

cc: All Counsel of Record via ECF